PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ghulam Nabi QAZI, et al
Serial No.: 10/621,038 Group No.: 1654
Filed: July 16, 2003 Examiner.: Michael V. Meller
For: PLANT BASED AGENTS AS BIOAVAILABILITY/BIOEFFICACY ENHANCERS FOR DRUGS AND NUTRACEUTICALS

Attorney Docket No.: U 014721-8

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION ACTION

In response to the Official Action of 9 March 2006, wherein the Examiner has required an election as between groups of invention, Applicants hereby elect to prosecute in the present

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application the claims of Group I, i.e. claims 1-28 drawn to a composition. Insofar as the Examiner has also requested an election as between specific drugs/nutriceuticals, Applicants hereby elect "antibiotics". Applicants respectfully make the election(s) with traverse.

First, with respect to the requirement for an election as between drugs/nutriceuticals, the Examiner has categorized this as an election between patentably **distinct** inventions (rather than as an election of species), but this categorization is respectfully believed to be in error. As discussed in MPEP 806.01, in passing upon questions of restriction, it is the **claimed** subject matter that is considered and such **claimed** subject matter that must be compared in order to determine the question of **distinctness**. Applicants respectfully point out that the Examiner has not referred to specific **claims** in making this restriction and that the restriction is therefore improper. If the Examiner were to re-categorize the requirement as one for an election of species, Applicants respectfully note that each of claims 1-21 and 28 read on the species "antibiotics" and should be examined with the elected claims.

With respect to the requirement for an election as between product and process of use, MPEP 806.05(h) makes clear that the Examiner has the burden of providing an example to show that (a) the process of using as claimed can be practiced with another materially different product; or (b) the product as claimed can be used in a materially different process. The Examiner has alleged that the product as claimed can be used in a materially different process **such as treating wounds**. However, Applicants respectfully submit that this is **not** an example of a **materially different process**. Wounds are often treated with, for example, oral

antibiotics whose bioavailability would be enhanced by the **claimed** process. Accordingly, Applicants respectfully submit that the claimed process and the process of the example provided by the Examiner are not materially different, and that the Examiner has not met the USPTO burden of showing distinctness as between the claimed product and process of use. For this reason, Applicants respectfully submit that the requirement for restriction should be withdrawn.

Applicants have fully responded to the outstanding Official Action, and now respectfully request an early action on the merits of at least the elected claims.

Respectfully submitted,

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